

No. 11753  
IN THE  
**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

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JAMES M. MOSCA, otherwise known as JAMES M. FLY,  
*Appellant,*  
*vs.*

UNITED STATES OF AMERICA,  
*Appellee.*

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**APPELLEE'S OPENING BRIEF.**

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## TOPICAL INDEX

	PAGE
Jurisdictional statement .....	1
Statutes and regulations involved.....	2
Statement of the case.....	2
Felony counts .....	2
Misdemeanor counts .....	3
Statement of facts.....	4
Preliminary .....	4
Questions presented .....	6

### I.

Sugar ration checks were "bills" or "claims" within the meaning of Section 80, Title 18, U. S. C. A.....	7
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### II.

The testimony of Fred Peterson was properly admitted.....	13
Conclusion .....	23

## TABLE OF AUTHORITIES CITED

CASES.	PAGE
Hemphill v. United States, 120 F. 2d 115; cert. den. 314 U. S. 627 .....	4
Spivey v. United States, 109 F. 2d 181; cert. den. 310 U. S. 631 .....	9
United States v. Barra, 149 F. 2d 489.....	7
United States v. Ganz, 48 Fed. Supp. 323.....	8
United States v. Gilliland, 312 U. S. 86.....	8
United States v. Goldsmith, 108 F. 2d 917; cert. den. 309 U. S. 678; rehear. den. 310 U. S. 657, 313 U. S. 599.....	8, 9
United States v. J. Greenbaum and Sons, Inc., 123 F. 2d 770....	9
United States v. Mellon, 96 F. 2d 462; cert. den. 304 U. S. 586 .....	8
United States v. Meyer, 140 F. 2d 652.....	12
United States v. Presser, 99 F. 2d 819.....	9
United States v. Tommasello, 160 F. 2d 348.....	7
United States v. Zavala, 139 Fed. 830.....	10
United States ex rel. Marcus v. Hess, 317 U. S. 537, 63 S. Ct. 379, 87 L. Ed. 443; rehear. den. 318 U. S. 799.....	12

## STATUTES

Emergency Price Control Act of 1942 (50 U. S. C., Sec. 633, et seq.) .....	1
General Ration Order No. 3, Sec. 1305.411(b) (8 F. R. 865)....	11
General Ration Order No. 8.....	1
Second War Powers Act of 1942.....	1
Third Revised Ration Order 3 (11 F. R. 134), Sec. 15.7(b).....	11
Third Revised Ration Order 3 (11 F. R. 134), Sec. 15.7(d).....	11
Third Revised Ration Order 3 (11 F. R. 134), Sec. 15.9(d).....	11
United States Code, Title 18, Sec. 80.....	1, 6, 7, 9, 10, 12
United States Code, Title 28, Sec. 225(a), (d).....	1

## INDEX TO APPENDIX

STATUTES	PAGE
General Ration Order No. 8, Sec. 2.9.....	1
Third Revised Ration Order No. 3 (11 F. R. 134), Art. XV:	
Section 15.1 .....	1
Section 15.2 .....	1
Section 15.3 .....	1
Section 15.4 .....	2
Section 15.5 .....	2
Section 15.6 .....	2
Section 15.7 .....	3
Section 15.8(d)(b) .....	3
Section 22.10 .....	4
Section 22.13(b) .....	4
Third Revised Ration Order No. 3 (11 F. R. 134) Art. XXV:	
Section 25.1 .....	4



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**Jurisdictional Statement.**

- A. The United States District Court for the Southern District of California had jurisdiction of appellant and the subject matter.
- B. This Court has jurisdiction of the appeal under the provisions of Title 28, United States Code, Section 225(a) and (d), which treat of the jurisdiction of courts of appeal.
- C. The crimes pleaded in the indictment are of two classes:
  - First: Counts I to VII, both inclusive, charge separate violations of Title 18, United States Code, Section 80.
  - Second: Counts VIII to XII, both inclusive, charge separate violations of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A., Sec. 633, *et seq.*), the Second War Powers Act of 1942, and General Ration Order No. 8.

## Statutes and Regulations Involved.

The statutes and regulations involved in this case are set forth in the appendix to Appellant's Opening Brief as supplemented by the appendix attached hereto.

## Statement of the Case.

On May 14, 1947, a twelve count indictment was filed in the United States District Court, for the Southern District of California, Central Division, against appellant [R. 2-10].<sup>1</sup>

## Felony Counts.

Counts One to Seven, both inclusive, are the felony counts. Each charges that appellant, on the respective dates identified, knowingly and wilfully made and used and caused to be made and used a false bill, account, claim and certificate (*i. e.*, a sugar ration check drawn on the Santa Monica and Vermont Branch of the Bank of America and bearing the signature, as maker, of appellant on behalf of the Italian American Import Co.), knowing the same to contain a fraudulent and fictitious statement and entry in a matter within the jurisdiction of the Office of Price Administration, an agency of the United States Government (*i. e.*, sugar ration accounts kept pursuant to the provisions of Third Revised Ration Order 3, promulgated by said agency pursuant to law), in that, at said time and place, there was no sugar ration account in the name of appellant, or the Italian American Import Co., in the Santa Monica and Vermont Branch of the Bank of America [R. 2-6].

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<sup>1</sup>The references proceeded by "R" are to the record on appeal and those proceeded by "A. B." are to appellant's brief.



### Misdemeanor Counts.

Counts Eight to Twelve, both inclusive, are the misdemeanor counts. Each charges that appellant wilfully used and transferred ration documents (*i. e.*, sugar ration checks drawn on Santa Monica and Vermont Branch of the Bank of America, and bearing the signature, as maker, of appellant on behalf of the Italian American Import Co., purporting to transfer sugar) to Smart and Final Co., in exchange for sugar in a way and for a purpose not permitted by a ration order, in that, at said time and place, there was no sugar ration account in the name of appellant or the Italian American Import Co., in the Santa Monica and Vermont Branch of the Bank of America [R. 7-10].

On June 23, 1947, motion of defendant to dismiss the indictment was denied and defendant entered plea of not guilty to each of the twelve counts of the indictment [R. 11].

From September 23, 1947 to September 25, 1947, appellant was tried before the Honorable Leon R. Yankwich, and a Jury [R. 24, 12]. At the conclusion of the Government's case in chief, the trial judge denied [R. 146] appellant's motion for judgment of acquittal [R. 130]. On September 30, 1947, appellant renewed his motion for judgment of acquittal [R. 14-15] which was denied October 3, 1947 [R. 15].

The Jury found appellant guilty on each of the twelve counts of the indictment [R. 13].

Thereafter the Court sentenced the appellant to imprisonment for one year on each of the first seven counts of the indictment, the sentences to run concurrently; imprisonment for one year on count eight of the indictment,

the sentence to run consecutively with sentences imposed on counts one to seven inclusive; and fined appellant ten thousand dollars (\$10,000) on count nine; five thousand dollars (\$5,000) on count ten; five thousand dollars (\$5,000) on count eleven and five thousand dollars (\$5,000) on count twelve (making a total of twenty-five thousand dollars (\$25,000) in fines) [R. 16-18].

### Statement of Facts.

#### PRELIMINARY.

The "Summary of the Facts" set forth in appellant's brief (A. B. 5-7), as well as other references in that brief to evidence taken at the trial, does not set forth the evidence most favorable to the Government, which alone will be considered on appeal.<sup>2</sup>

Appellant, James M. Mosca, also known as James M. Fly, prepared and signed a series of worthless sugar ration checks in amounts varying from 1,500 to 10,000 pounds of sugar [R. 28-32; 60-61; 67-68; Exhibits 1 to 12]. These checks were drawn on a non-existent sugar account of a non-existent company [R. 60], namely, the Italian American Import Company, and were signed by appellant on behalf of this mythical company [R. 28].

In some instances appellant procured the sugar himself by presenting the checks to such companies as Smart and Final Company [R. 28-29; 56-59].

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<sup>2</sup>See *Humphill v. United States*, 120 F. 2d 115, 117 (C. C. A. 9), cert. den. 314 U. S. 627.

In other instances appellant wrote the checks and then sold them to other persons, or establishments needing sugar, at a certain price per pound [R. 40-41] which the purchaser had to pay appellant in addition to the price paid the supplier for the sugar.

Under another name, to wit, Italian American Delicatessen, appellant was registered with OPA [R. 68] and legally entitled to an inventory of sugar not to exceed 480 pounds [R. 109-110]. This sugar ration bank account of appellant, doing business as Italian American Delicatessen, was carried at the Santa Monica and Vermont Branch of the Bank of America [R. 63, 68, 84].

Appellant's worthless sugar ration checks signed by him on behalf of the non-existent "Italian American Import Co.," which was not registered with OPA [R. 68], had no sugar ration account with said Bank of America Branch Bank [R. 60], nevertheless, said worthless sugar ration checks were drawn on said Branch of said Bank.

Appellant negotiated the worthless checks by arrangement with one Fred Peterson, the Assistant Cashier and Chief Clerk of said Branch of said Bank, who removed said checks from the records of the Bank before the end of the month so that no record would exist by means of which the transaction could be traced [R. 115-124].

When Peterson left the bank, he was succeeded by one Gordon Smith who continued the operation of the scheme devised by appellant and Peterson after receiving instructions from Peterson as to the method of handling appellant's checks [R. 120-124].

### Questions Presented.

Appellant's four "Specifications of Error" (A. B. 7), present only two issues, to wit:

First: Are the sugar ration checks involved in the first seven counts of the Indictment false bills, accounts, claims or certificates within the meaning of Section 80, Title 18, U. S. C. A.?

Second: Was it error to admit the testimony of the witness Fred Peterson, Assistant Cashier and Chief Clerk of the Bank on which the sugar ration checks were wrongfully drawn?

The foregoing "First" issue is determinative of appellant's Specifications I, II and IV. The above "Second" issue is appellant's Specification III.

We shall discuss appellant's Specifications as only two issues and in the order above indicated.

I.

**Sugar Ration Checks Were "Bills" or "Claims" Within the Meaning of Section 80, Title 18 U. S. C. A.**

The question may be put this way: is the language of Section 80 broad enough to comprehend the situation in the first seven counts of the Indictment in the instant case?

In so far as is pertinent to this issue, each of the first seven counts of the Indictment charges that:

"\* \* \* [appellant] knowingly and willfully made and used and caused to be made and used a false bill, account, claim and certificate, to wit, a sugar ration check \* \* \* knowing the same to contain a fraudulent and fictitious statement and entry in a matter within the jurisdiction of the Office of Price Administration, an agency of the United States Government, namely, sugar ration accounts kept pursuant to \* \* \* Ration Order \* \* \*, in that, \* \* \*, there was no sugar ration account in the name of [appellant] or the Italian American Import Co. in the Santa Monica and Vermont Branch of the Bank of America."

Analogy offers some basis for analysis. It is therefore pertinent to note that the following have been held to be within the purview of Section 80:

Falsity in Prescription for Narcotics.

*U. S. v. Tommasello* (C. C. A. N. Y. 1947), 160 F. 2d 348.

Falsity in application for Alien Identification Certificate.

*U. S. v. Barra* (C. C. A. N. Y. 1945), 149 F. 2d 489.

False Report as to amount of petroleum produced.

*U. S. v. Gilliland* (Texas 1941), 312 U. S. 86.

False Statements in Application for FHA Loan.

*U. S. v. Mellon* (C. C. A. N. Y. 1938), 96 F. 2d 462, cert. den. 304 U. S. 586.

False Invoice covering Sale of Used Tire under OPA.

*U. S. v. Ganz*, D. C. Mass. 1942, 48 Fed. Supp. 323.

False statement to secure Visa.

*U. S. v. Goldsmith* (C. C. A. N. Y. 1940), 108 F. 2d 917, cert. den. 309 U. S. 678, reh. den. 310 U. S. 657, and 313 U. S. 599.

The purpose behind this section is not only to protect the Government against false monetary claims but to protect the authorized functions of governmental departments and agencies from the perversion which might result from other deceptive practices.

*U. S. v. Gilliland*, 312 U. S. 86, 61 S. Ct. 518, 85 L. Ed. 598 (1941).

*United States v. Ganz*, 48 Fed. Supp. 323 (D. Mass. 1942), involved false invoices which were made and kept concerning the sales of tires, listing the sale price of used tires sold to certain persons at a price less than the actual sale price, and false records made and kept of such sales. An O. P. A. regulation required the keeping of such records for inspection by the O. P. A. Such invoices were held to be within the meaning of the statute, and the keeping of records of such sales by the O. P. A. to be a "matter within the jurisdiction of [a] department or agency of the United States."



Pecuniary loss to the Government is not essential to guilt under this statute.

*U. S. v. J. Greenbaum and Sons, Inc.*, 123 F. 2d 770 (C. C. A. 2d 1941);

*U. S. v. Goldsmith*, 108 F. 2d 917 (C. C. A. 2d 1940), cert. den. 309 U. S. 678;

*U. S. v. Presser*, 99 F. 2d 819 (C. C. A. 2d 1939).

The force and effect of statutes of this kind, designed to prevent frauds upon the Government, may not be frittered away by a mere literal construction.

*Spivey v. U. S.*, 109 F. 2d 181 (C. C. A. 5th 1940), cert. den. 310 U. S. 631.

In the *Spivey* case, above, a charge was brought under Section 80 based on cotton producer's notes which had been filled out for sums in excess of the amounts actually obtained by the farmers thereon, and in some instances the names of the makers of the notes would be forged, following which the defendant would take the notes to various banks and secure credit thereon. The banks, believing the notes were genuine, would assign them to the Commodity Credit Corporation. The defendant, on appeal, contended that such an instrument did not constitute "a bill" within the meaning of the statute. The Court said at page 184, "We cannot agree with appellant on any of these points." The Court further said on page 185:

"The third point made against the conviction and sentence under Section 80, that Count five and certain other counts in the indictment erroneously charge the use of a 'false bill,' whereas the instrument declared on in each of them, is not a bill at all, but something entirely different, is we think, wholly without merit. Each of the counts in question, fully and clearly de-

clares upon the instrument and by quoting it, shows what it in fact is, and if calling the cotton producer's note and loan agreement, declared on in each count, a 'false bill,' was to misname it, this was mere surplusage and did not at all affect the validity of the counts."

In *United States v. Zavala*, 139 Fed. 830 (C. C. A. 2d 1944), the defendant was indicted for knowingly making a false and fraudulent baggage declaration in violation of the provisions of Title 18, Section 80 of the United States Code Annotated, wherein he set forth he possessed \$850.00 in United States currency and no more, whereas he had brought into the country and had in his possession the further sum of \$19,500.00 in such currency which he had not mentioned in his declaration or otherwise. The Court said (page 831):

"We feel no doubt that Section 80 covers both the use of documents to defraud the government and also the use of any false statement, whether oral or written, as to any matter within the jurisdiction of any department or agency of the United States."

That the term "matter within the jurisdiction" of the United States, etc., should not be literally and technically construed is made plain by the same decision on page 832, where the Court said:

"It is also plain that the declaration and representation involved a 'matter within the jurisdiction' of the United States Treasury and its Customs Bureau, and, therefore, of a 'department or agency of the United States', within the meaning of Section 80 of Title 18."



The writing of sugar ration checks and the uttering and publishing thereof are matters within the jurisdiction of any agency of the United States.

Third Revised Ration Order 3 (11 F. R. 134; issued 12-29-45, effective 1-1-46).

Under the terms of Section 15.7(b) a ration check must bear the name of the account and the depositor's authorized signature. Under Section 15.7(d) thereof, no check may be issued for an amount larger than the balance of the account. Section 15.9(d) provides *inter alia*, "a depositor must keep . . . statements of accounts received by him, canceled checks returned to him and all stubs from which checks have been detached or other record used in place of stubs. All records shall be subject to inspection, removal or other disposition only by the Department of Justice, the Office of Price Administration or any other persons authorized by the Office of Price Administration."

Banks participating in the ration banking system are agencies of the Office of Price Administration.

General Ration Order No. 3, Section 1305.411(b) (8 F. R. 865; issued 1-4-43, effective 1-27-43).

The same principles of law apply to a ration check for sugar as apply to an ordinary check for money. In the latter case a check is a representation that there is an account and that the drawer is authorized to draw upon it.

The indictment follows the language of the statute, and the instrument described in the indictment as having been

falsely made, etc., by appellant is covered by this language. As has been pointed out, Section 80 has not been construed narrowly but has been liberally interpreted to prevent frauds of all kinds, whether monetary or not, and whether made in writing or not, which are the result of false or fraudulent statements or concealments.

In *United States v. Meyer*, 140 F. 2d 652 (C. C. A. 2d 1944), the defendant was given an opportunity, without compulsion, to appear and present evidence before the Exclusion Board. He appeared and in answer to questions stated that he had once "and just once" met a certain person about whom they asked him. This person had been convicted in December 1941 of conspiring to commit espionage against the United States. As a result of his statements, defendant was indicted on two counts of making a false and fraudulent statement in a matter "within the jurisdiction of [a] department or agency of the United States," in violation of Section 80. The Court rejects defendant's attempt to narrow the construction of the statute either as to the jurisdiction of the agency or as to the kind of statements covered and held that the section is broad enough to cover the statements made by the defendant.

That a broad interpretation should be given to the statute in so far as the agency to which the statements, claims, bills, etc., are made or presented and as to the type of statements and conduct covered by the section, is made clear by *United States ex rel. Marcus v. Hess*, 317 U. S. 537, 63 S. Ct. 379, 87 L. Ed. 443 (1943); reh. den. 318 U. S. 799.

II.

**The Testimony of Fred Peterson Was Properly  
Admitted.**

It was not error to admit the testimony of Fred Peterson, Assistant Cashier and Chief Clerk of Santa Monica and Vermont Branch of the Bank of America [R. 112-113].

Appellant could not have committed the crimes of which he has been convicted had it not been for the co-operation of the witness Peterson and his successor Smith in their strategic position in the bank. The revelation of the arrangement, its establishment or creation and the acts done pursuant thereto were pertinent to the issue of intent.

The testimony of Peterson tended to show, if it did not demonstrate, that throughout the calendar year 1946 [R. 117], Peterson and his successor, Smith [R. 120-123] at the instance and request of appellant [R. 121] who paid them a consideration therefor (1 penny a pound) either wrongfully and feloniously made false entries by crediting appellant's sugar ration point account to cover appellant's overdrafts thereon or, if more convenient to Peterson and Smith, destroyed appellant's overdrafts.

The relationship between appellant and Peterson was the *sine qua non* to appellant's commission of the crimes of which appellant has been convicted in this case.

The testimony of Peterson was admitted subject to a motion to strike if it were not connected up [R. 115]. At the conclusion of the testimony of the witness Peterson appellant made no motion to strike. Even if such motion had been made, it would have been properly denied

because the evidence showed a continuing course of conduct between appellant and the witness throughout the calendar year 1946 pertinent to both the specific acts in issue and concomitant intent of appellant.

Supplementing the selected excerpts of testimony of witness Peterson printed in the opening brief of appellant, the following additional portion thereof is essential to proper perspective:

“A. Well, it was just that he asked me if I would credit his account with these invalid deposits.

Q. What did you say? A. I agreed to and I did.

Q. And you did so? A. Yes, sir.

Q. Now, on about how many occasions can you recall having done that—gone through that process of entering deposits to his credit? [128] A. There were several.

Q. Was there any break or secession in that conduct or did it continue rather generally and regularly throughout the rest of the year? A. Yes, it did.

Q. Well, what did—what is your answer?

The Witness: It continued throughout the year.”  
[R. 117.]

\* \* \* \* \*

“Q. By Mr. Bell: As near as you recall now try to think back and recall just what Mr. Fly said to you and what you said to Mr. Fly. [130] A. In regard to these checks?

Q. Yes. You said that you had told him you were going to destroy the checks? A. Yes.

Q. Rather than make deposits? A. Yes.

Q. Fictitious deposits. Now, what did you say and what did he say? A. Well, as near as I can remember—

Q. Keep your voice up. A. As near as I can remember I just told him that I would destroy the checks. He asked me if I would and I told him yes and that was about the size of the conversation.

Q. Well, was anything further said at these other conversations? A. Oh, it was all the same thing. It was always about the checks.

Q. I am asking you, Mr. Peterson, to try to remember as nearly as possible, in all fairness to Mr. Fly so that you will quote him as nearly as you can, I am asking you to search your memory now and try to say just what he said and just what you said if you can possibly recall it? [131] A. Well, that I can't do. He asked me to take care of them and I said that I would.

Q. And did these conversations cease sometime in 1946 or did they continue up until the latter part of 1946? A. They continued right up until the latter part of 1946.

Q. You are no longer with the bank, are you? A. No, sir.

Q. When did you leave the bank? A. September 30th, 1946.

Q. Did you have any conversation with Mr. Fly concerning your leaving the bank? A. Yes, sir.

Q. Where did that conversation occur? A. I couldn't say the exact place.

Q. Well, was it at his place of business, at the bank, or where? A. Probably at his place of business.

Q. Was anyone else present? A. No, sir.

Q. Now again think back and try to recall as nearly as you can what you said to him and what he said to you.

Mr. Carr: Objected to on the ground it is wholly immaterial.

The Court: I can't tell you from the way the question is asked whether it is material or not. [132]

Mr. Carr: But, your Honor, the answer comes out and then it is like the old saying—you don't like for me to say it, I know, but if you will pardon me, it is like, you know, ringing the bell once. The harm is done.

The Court: Well, I will reserve a motion to strike. You may answer the question.

The Witness: Where were we now?

The Court: He is asking for the conversation at the time you were leaving the bank or when you were about to leave the bank.

The Witness: I told Mr. Fly that I had prepared my resignation and intended to put it in and that he shouldn't write any more checks. And at a later date he contacted me and told me that he had written more checks and asked me to go back to the bank.

Q. By Mr. Bell: When was this? A. That was about the middle of October.

Q. Where did you hold the conversation? A. That particular conversation, I remember, was at Tom Brennenian's Restaurant over dinner.

Q. Was anyone else present? A. No.

Q. Now, relate, if you can, the entire conversation. A. Well, I told him that I wouldn't go back to work at the bank and he said, 'Well, we will have to do something,' [133] and it was then that it was suggested—



Q. Who suggested it? A. Mr. Fly suggested that I see Mr. Smith.

Q. Who was Mr. Smith? A. He was employed at the bank at that time.

Q. Was that the Mr. Smith who succeeded you? A. Yes, sir.

Q. All right, go ahead and tell the rest of the conversation. A. I approached Mr. Smith.

Q. Well, going back to the conversation, have you related all of it that you can recall? A. Well, as I recall it, that was about all there was. I told him I would see Mr. Smith, which I did.

Q. Well, is your memory exhausted as to anything further that was said at that time? A. Well, he said he would pay Mr. Smith one cent a pound for these checks.

Q. Well, did he say anything further about what you should do? A. No, sir.

Q. Well, do you recall whether or not he asked you to tell Mr. Smith anything? A. Only that he told me to ask Smith if he would take care of it.  
[134]

The Court: You cannot tell us what you told Smith. After you talked to Smith did you report back to Mr. Fly?

The Witness: Oh, yes, then I did.

The Court: To Mr. Fly?

The Witness: Yes, sir.

Q. By Mr. Bell: Did you contact Mr. Smith? A. Yes, sir.

Q. And did you report back to Mr. Fly? A. Yes, sir.

Q. And where did you see Mr. Fly? A. I don't recall the exact location.

Q. Well, about when did you see him? A. Well, it would have been the next day, the day after I talked to Mr. Smith.

Q. Did you have a conversation with him? A. Yes, sir.

Q. Relate the conversation as nearly as you can. A. I told him—

Mr. Carr: I assume, if I may interrupt, my objection will run to this line of testimony.

The Court: That is all right.

Mr. Carr: On the same ground, your Honor.

The Court: That is right.

Q. By Mr. Bell: Relate what he said to you and what you said to him as nearly as you can remember. [135] A. I told him I talked to Mr. Smith and Mr. Smith had agreed to destroy these checks as they came in.

Q. Do you recall whether anything further was said about the one cent a pound? A. No, only that he had said he would pay him one cent a pound. That was understood.

Q. Did you thereafter have any further dealings with Mr. Fly in connection with the sugar ration account at the bank? A. Yes, sir.

Q. What was the transactions that you had after that? A. Mr. Fly gave me money to give to Mr. Smith.

Q. When he gave you the money did he say anything to you? A. Just, 'Give this to Mr. Smith.' 'Smitty' we called him.

Q. About how many occasions did he give you some money to give to Mr. Smith? A. Several. I would not know.



Q. By 'several' can you recall whether it was five or six or seven times? A. Well, 10 or 15 times, 10 or 12.

Q. On each occasion can you recall how much he gave you to give to Mr. Smith? A. Always various amounts, \$75.00 or \$100.00 or \$125.00. [136] Small amounts like that.

Q. Mr. Peterson, will you describe to the jury a little more completely the manner in which you handled these accounts and as you described briefly, extract or destroy the checks. Will you describe what happened—how those checks were handled? A. Well, the checks came into the bank on a transmittal letter, possibly two or three times a month.

Q. When did they arrive at the bank—what time of day? A. In the early morning by messenger.

Q. In what form were they when they arrived? A. They were fastened around the transmittal letter with a rubber band.

Q. What time did you get to the bank? A. Usually around seven o'clock.

Q. Do you know what happened then to these ration bank accounts or checks? A. Yes, sir.

Q. Describe what happened physically? A. Well, they were placed in the vault and kept there until the end of the month.

Q. Did you place them there? A. Yes, sir.

Q. Did anyone else handle these accounts other than [137] you? A. No, sir.

Q. At the end of the month what happened? A. At the end of the month they were brought out along with all of the other accumulation of ration evidences that would come over the counter. They would be worked up and charged to the various accounts.

Q. And when you came to check those ration checks did you see any checks made out by the Italian-American Import Company? A. Yes, sir.

Q. And signed by James M. Fly? A. Yes, sir.

Q. When you came to those checks what did you do with them? A. I pulled those out and destroyed them.

Q. Have you been prosecuted for your part in that transaction? A. Yes, sir.

Q. Have you been sentenced? A. Yes, sir.

Mr. Bell: That is all.

*Cross-Examination*

By Mr. Carr:

Q. When was the last time you saw Mr. Fly, Mr. [138] Peterson? A. Day before yesterday.

Q. Where did you go to see Mr. Fly on that occasion? A. I just stopped to talk to him.

Q. How much did you ask him for? A. I asked him for \$100.00.

Q. Mr. Fly doesn't owe you any money at this time, does he? A. He has promised to pay my fine.

Q. Promised to pay your fine? A. Yes, sir.

Q. When was that? A. Well, right after my—right after I was sentenced.

Q. Why don't you have money to pay your own fine? A. No, sir.

Q. Why don't you have? A. (No answer.)

Q. When you left town you had \$6,000 in the bank, didn't you? A. Yes, sir.

Q. Where is the \$6,000? A. Most of it I repaid to my brother-in-law.

Q. To your brother-in-law? A. Yes, sir. [139]

Q. When did you leave town? A. About the latter part of November or first of December.

Q. Was that at the time the news came up that something might happen? A. Yes, sir. Mr. Fly told me that he was being investigated.

Q. And you got out of town? A. Yes, sir.

Q. Where were you picked up by the marshal? A. At Las Vegas.

Q. And you were brought to Los Angeles? A. Yes, sir.

Q. And were you put in jail? A. Not here in Los Angeles.

Q. How did you get out? On bail? A. Yes, sir.

Q. Who made your bail? A. Mr. Fly.

Q. He paid for your bail, did he? A. Yes, sir.

Q. Did you ask him to pay for your bail? A. Yes, sir.

Q. You and Mr. Fly had been friends for some time? A. Yes, sir. [140]

Q. And how many times have you talked with Mr. Taylor here after you got back to Los Angeles? A. I didn't talk to Mr. Taylor after I got back to Los Angeles.

Q. What agents did you talk to? A. I didn't talk to any agent.

Q. You talked to Mr. Bell? A. I talked to Mr. Bell just before I came up here the other day.

Q. Well, you entered a plea, didn't you, in some other court? A. Yes, Judge Mathes.

Q. And I believe you got a fine? A. Yes, sir.

Q. You, of course, were not promised anything by anyone, were you? A. No, sir.

Q. Was there any implication you would not be called as a witness? A. No, sir; my attorney told me he didn't think that I would be called as a witness but that was the only assurance.

Q. You were not in jail; you are out and free, aren't you? A. Yes, sir.

Q. And all you have now is a fine to pay? [141]  
A. Yes, sir.

Q. Incidentally, how many people were you tearing checks up for? A. Mr. Fly is the only one.

Q. Was that the only one? A. Yes, sir; I covered an overdraft for one other party.

Q. And, of course, you got nothing out of these things yourself? A. Well, I wouldn't say that.

Q. What? A. No, I got something out of it.

Q. When did you decide to leave town, by the way? A. Shortly—just right before I left.

Q. It was a rather sudden decision, I take it, isn't that right? A. Yes, sir.

Q. And where were you at the time—I believe you said they found you in Arizona? A. Yes, in Nevada.

Q. Now, isn't it a fact that you called Mr. Fly several times and asked him for money recently? A. Yes, sir.

Mr. Carr: That is all. [142]

*Redirect Examination*

By Mr. Bell:

Q. When you left town did Mr. Fly say anything about your leaving town? A. Yes, sir.

Q. What did he say? A. Well, he advised me to leave town.

Mr. Carr: I move to strike that answer. I object to the word 'advise.'

The Court: I will strike out the word 'advised.'

Q. By Mr. Bell: Where and when did the conversation occur? A. It was on the telephone.

Q. You have talked to him on the phone before?  
A. Yes, sir.

Q. And you are able to recognize his voice? A. Yes, sir.

Q. What was the conversation? A. Well, he told me that he was being investigated and he thought it would be a good idea if I would leave town. I was planning to leave anyway to go back to Nebraska.

Q. But that was his statement as nearly as you can recall it? A. Yes, sir.

Mr. Bell: That is all. [143]

*Recross-Examination*

By Mr. Carr:

Q. How long had you worked in the bank, by the way? A. Seven years in the Bank of America.

Q. What was your occupation previous to that time? A. Ten years with the Federal Reserve Bank.

Q. And how old are you, sir? A. 33." [R. 119-128.]

**Conclusion.**

No reversible error was committed by the trial court. Appellant had a full and fair trial. The verdict is fully supported by the evidence. The sentence and the fine were moderate and clearly justified. The Judgment should be affirmed.

Respectfully submitted,

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## APPENDIX.

Some additional pertinent provisions of General Ration Order Number 8 are:

“§2.9 *Transfer in exchange for invalid or improperly acquired ration document.* No person shall transfer or receive any rationed commodity in exchange for a ration document if he knows or has reason to believe that the ration document was not validly issued or that it was not acquired in accordance with a ration order by the person tendering it.”

Third Revised Ration Order No. 3 (11 F. R. 134), provides in part as follows:

### “ARTICLE XV—RATION BANKING

Sec. 15.1. *How accounts are authorized.* Revised General Ration Order 5 and this order require certain persons and permit others to have ration bank accounts. Only these persons may become depositors and they may open only the accounts specifically authorized by or under Revised General Ration Order 5 and this order.

Sec. 15.2. *Separate depositor as to each account.* Each person who opens more than one account is deemed to be a separate depositor as to each of his accounts. (Thus, if one person has two establishments and opens a separate sugar account for each, he is a sugar depositor as to each account.)

Sec. 15.3. *How many accounts permitted.* Not more than one account for any one establishment may be opened for sugar unless authorized by the Office of Price Administration.

Sec. 15.4. *Accounts opened where dollar accounts carried.* Every account opened for any establishment must be opened at a bank carrying a dollar checking account for that establishment, unless otherwise authorized by the Office of Price Administration. . . .

Sec. 15.5. *Signature cards and other papers required.* A person shall open his first account by signing and delivering to the bank completed signature cards supplied by the bank. He may open any additional account in the same bank by furnishing such additional signature cards as the bank may request. He may change the authorized signatures for an existing account by signed notice to the bank, and by furnishing such signature cards as the bank may request. He shall also, in all cases, furnish such references, proofs of identity and documents showing his authority to execute the signature cards as the bank may request.

Sec. 15.6. *Deposits (a) What to be deposited.* A depositor shall deposit all evidences which are in his possession when he opens his account, or are thereafter accepted by him, in the account carried for the establishment by or for which the evidences were received, and may not transfer them to any person for any purpose, unless otherwise provided by the Office of Price Administration. However, he shall not deposit in his account any evidence which has not yet become valid or which no longer is valid for deposit.

(b) *How deposits are made.* All ration evidences presented for deposit must be in the form prescribed by Revised General Ration Order 5 or this order and accompanied by a deposit slip filled out in duplicate, in the form prescribed by the Office of Price Admin-

istration indicating each item deposited by type and amount, and in the case of a check, by transit number, unless permission to omit the transit number is granted by the Office of Price Administration. All evidences must be endorsed by the depositor before being deposited.

. . . . .

(d) *Person who fails to open a required account shall not transfer evidences.* A person who is required to open an account but does not do so may not transfer ration evidences to any person for any purpose.

Sec. 15.7. *Issuance and use of checks* (a) *When check to be issued.* A check may be issued only by a depositor and only for a purpose permitted and with the effect prescribed by Revised General Ration Order 5 or this order authorizing the account on which the check is drawn.

. . . . .

Sec. 15.8(d)(b). *How checks are issued.* Each check and its stub must be completely filled out before the check may be issued, but a check register, duplicate voucher or any similar record may be used in place of the check stub. Both check and stub or other record must contain the name of the person to whom the check is to be issued, the date on which it is drawn and the amount of credits to be transferred. The check must bear the name of the account and the depositor's authorized signature or signatures.

(c) *Post-dated checks prohibited.* No person may issue or transfer a check before the date it bears.

(d) *Overdrafts prohibited.* No check may be issued for an amount larger than the balance in the ac-

count on which it is drawn less the amount of outstanding checks drawn on that account. . . .

Sec. 22.10. *Unlawful use or possession.* No person shall at any time either use or have in possession or under his control or take delivery of any sugar, checks, coupons, stamps or ration books, where such possession, control, or acquisition is in violation of this order.

Sec. 22.13(b) . . . unless expressly permitted by this order or otherwise authorized by the Office of Price Administration, no person may surrender evidences except to authorize a delivery of sugar.

#### ARTICLE XXV—DEFINITIONS.

Sec. 25.1. *Meaning of terms used in this order.*

. . . (a) Whenever the provisions of this order impose or confer duties, obligations, rights or privileges upon an establishment or registering unit, such duties, obligations, right and privileges shall be considered as being conferred or imposed upon the person owning such establishment or registering unit with respect thereto.

#### DEFINITIONS.

(1) 'Account' means a sugar ration bank account carried by a bank, in which the bank keeps a record of deposits of stamps, coupons, and checks and of transfers of sugar ration credits.

(5) 'Check' means a sugar ration check, in the form prescribed by the Office of Price Administration, drawn by a depositor against his account and made payable to the account of a named person.

(9) 'Depositor' means a person who has a ration bank account. A person shall be deemed a separate depositor with respect to each of his accounts.

(15) 'Issue' when used with respect to a check, means the delivery of a completed check to the person to whose account the check is made payable.

(19) 'Ration evidences' or 'evidences' means checks, coupons, and stamps.

11 F. R. 134, 11699."

